

(3) The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion must state with particularity the grounds for the motion and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701; amd. Sec. 168, Ch. 800, L. 1991.

**46-13-102. Repealed.** Sec. 263, Ch. 800, L. 1991.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

**46-13-103. Repealed.** Sec. 263, Ch. 800, L. 1991.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

**46-13-104. Ruling on motions.** (1) A motion made before trial must be determined before trial unless the court, for good cause, orders it deferred for determination at the trial of the general issue or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.

(2) Except where mandated by Title 46, the court has discretion to conduct a hearing on the merits of a motion.

(3) The court's final determination of any pretrial motion must state, either in writing or on the record, the court's findings of fact and conclusions of law.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705; amd. Sec. 169, Ch. 800, L. 1991.

**46-13-105. Repealed.** Sec. 263, Ch. 800, L. 1991.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

**46-13-106. Renumbered 46-13-402.** Code Commissioner, 1991.

**46-13-107 reserved.**

**46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is given by the defendant.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506; amd. Sec. 171, Ch. 800, L. 1991; Sec. 46-18-503, MCA 1989; redes. 46-13-108 by Code Commissioner, 1991; amd. Sec. 23, Ch. 262, L. 1993; amd. Sec. 12, Ch. 395, L. 1999.

**46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.** (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

(2) The notice must specify the other crimes, wrongs, or acts and must include a statement as to the purpose for which the evidence is to be offered.

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is entered by the defendant.

History: En. Sec. 47, Ch. 262, L. 1993; amd. Sec. 13, Ch. 395, L. 1999.

**46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

Repeal →